

SAMPLE

CONSENT ORDER

3/2/89

E.5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

MAR 02 1989

US EPA RECORDS CENTER REGION 5



498110

Richard Fields, Esquire
Arnold and Porter
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Re: Selmer Company, Elkhart, Indiana

Dear Mr. Fields:

Enclosed is a proposed Administrative Order by Consent pertaining to the Selmer Company Site in Elkhart, Indiana. It is this Agency's response to the proposed Consent Decree accompanying your letter of September 16, 1988. We apologize for the delay in formally responding to your prior submittal. However, it is my understanding that your client has been moving forward with some of the activities which are required by the Order.

Based on our various telephone conversations, we expect that you will provide this agency with evidence of other Potentially Responsible Parties in this matter. Until we have received that information and had an opportunity to evaluate it, however, it is our position that Selmer Company is solely responsible for the activities set forth in the enclosed Order, and for reimbursing U.S. EPA for its past costs.

On the subject of costs, you will note that recovery of the costs associated with the Superior Street neighborhood are to be paid by Selmer. The Agency maybe willing to defer recovery of its costs associated with the Denver/Rice Streets plume, pending the determination of the direction of groundwater flow. However, given the arguable applicability of the statute of limitations bar, it would be necessary for Selmer to explicitly agree that any such bar is tolled. This would allow your client to gather evidence as to other potentially responsible parties which may be called upon to reimburse the government for its costs. Please advise if your client would be willing to sign a tolling agreement in the form enclosed.

After you have had an opportunity to review the Order, would you please contact me to advise whether it is acceptable in its present form or whether you wish to suggest amendments. In the latter instance, it is important that we allocate time in the near future for this purpose, given the onset of weather which will permit the implementation of the field activities. Either Steve Kaiser or I will be available at your convenience for this purpose.

Again, we apologize for the delay, but look forward to a swift resolution of any disagreements.

Sincerely,

Charles McKinley
Assistant Regional Counsel

Enclosure

cc: Steve Kaiser, 5CS-TUB-4
Connie Puchalski, 5CS-TUB-4
Ken Theisen, 5HS ✓

selmer.ltr mckinley/walker 3/1/89 diskette 9000

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF	)	DOCKET NO.
)	
SELMER COMPANY	)	ADMINISTRATIVE ORDER
	)	BY CONSENT PURSUANT TO
	)	SECTION 106 OF THE COMPREHENSIVE
	)	ENVIRONMENTAL RESPONSE, COMPEN-
	)	SATION, AND LIABILITY ACT OF
	)	1980, 42 USC SECTION 9606, AS
	)	AMENDED BY THE SUPERFUND AMEND-
	)	MENT AND REAUTHORIZATION ACT OF
	)	1986, PUB L. 99-499
)	

PREAMBLE

The United States Environmental Protection Agency ("U.S. EPA") and the Selmer Company ("Respondent") have agreed to the making and entry of this Order by Consent. This Order is issued pursuant to Sections 106(a) and 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9606(a) and 9622(h) as amended by the Superfund Amendment and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"), and authority delegated to the Administrator of the U.S. EPA on January 29, 1987, by Executive Order No. 12580, 52 Federal Register 2923, further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrator by U.S. EPA delegation Nos. 14-14-C and 14-14-D and further delegated to the Director, Waste Management Division. Notice of issuance of this Order has been given to the State of Indiana.

The Order requires the Respondent to pay money damages on account of costs incurred by U.S. EPA and to undertake investigatory activities at the Respondent's facility in Elkhart County, Indiana located at 500 South Industrial Parkway, Elkhart, Indiana 46516 (the "Facility"). These investigatory activities are required to determine if hazardous substances have been released to the environment, if they have caused property damage and whether a threat of release of hazardous substances exists. The activities required under this Order are necessary to determine the remedial activities which should be undertaken at the Facility.

FINDINGS

Now, therefore, for the purposes of this cause only, the following findings are made:

1. The U.S. EPA has jurisdiction over both the parties and the subject matter of this action.
2. Respondent is a company authorized to do business in Indiana and operates a place of business at 500 S. Industrial Parkway, Elkhart, Indiana 46516.
3. The Respondent has acknowledged in its answer to a request for information issued by U.S. EPA pursuant to Section 104(e) of CERCLA, which answer is dated June 21, 1988, that trichloroethylene (TCE) was placed onto and into the soils at the aforesaid location, during the early 1970's.

4. In 1985, groundwater samples taken from numerous residential wells in an area hydrologically downgradient from the facility, generally bounded by Superior Street and East Jackson Blvd., (the Superior Street area), were discovered to contain TCE, as well as other volatile organic compounds.

6. Concentrations of TCE ranged as high as 19,900 parts per billion (ppb) in some of said samples.

7. TCE is a suspected human carcinogen.

8. The maximum contaminant level of TCE permitted in a public drinking water supply is 5 ppb.

9. In response to the aforesaid discoveries, U.S. EPA commenced an emergency removal action by which it made public drinking water available to all residences in the area known to have wells contaminated by TCE.

10. As an interim measure, where it wasn't possible to quickly install public water mains, activated filters of various types were installed.

11. The U.S. EPA has expended \$367,058.98 in providing public water and filters and in related activities in the Superior Street area.

12. Elevated concentrations of TCE and other volatile organic compounds were also found in residential wells in two other neighborhoods near Respondent's facility. One neighborhood

is generally bounded by Denver Street and Rice Street, and the other neighborhood is generally along Outer Drive.

13. In response to contamination found in the Denver/Rice neighborhood, U.S. EPA took actions similar to those it took in the Superior Street area, as described above.

14. The U.S. EPA has expended approximately \$202,000 on account of said activities in the Denver/Rice neighborhood.

15. In response to the contamination found in the Outer Drive neighborhood, Respondent has undertaken to provide bottled water or water filters to all affected residences.

Determinations

1. Selmer Company's place of business at 500 S. Industrial Parkway, Elkhart, Indiana is a "facility" as defined by Section 101(a) of CERCLA, 42 U.S.C. Section 9601(9).

2. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

3. Respondent is the present "owner" and "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20), and is, therefore, a liable person under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

4. Trichloroethylene and volatile organic compounds are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

5. The presence of hazardous substances, specifically, trichlorethylene and volatile organic compounds, in the groundwater and in the soil constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

6. The actual or threatened release of hazardous substances from the Facility presents an imminent and substantial endangerment to the public health, welfare, and the environment.

7. The actions required by this Order, if properly performed, are consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA; and are reasonable and necessary to protect the public health, welfare and the environment.

8. The conditions present at the facility constitute a threat to public health or welfare or the environment based upon consideration of the factors set forth in the NCP, Section 300.65(b)(2). These factors include, but are not limited to, the following:

a. actual or potential exposure to hazardous substances or pollutants or contaminants by nearby populations, animals, or food chain;

b. actual or potential contamination of drinking water supplies or sensitive ecosystems;

c. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate;

These three factors exist at the facility due to the presence of trichlorethylene and volatile organic compounds in the groundwater and soil; these hazardous substances may migrate throughout the aquifer or disperse in the form of windborn dust; exposure to these substances may cause both acute and toxic effects and an increased cancer risk in both humans and animals in the vicinity of the site.

ORDER

Based upon the foregoing findings and determinations and the Administrative Record and pursuant to Section 106(a) of CERCLA, 42 U.S.C Section 9606(a), it is hereby ordered and agreed that Respondent shall undertake and complete the following actions, and pursuant to Section 122(h) of CERCLA, 42 U.S.C. Section 9622(h) that the following damages on account of costs incurred by U.S. EPA will be paid by Respondent.

1. Respondent shall pay money damages on account of the costs incurred by U.S. EPA in the Superior Street area in the amount of \$367,058.98 to the Hazardous Substance Superfund within sixty (60) days of the effective date of this Order. The payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substances Superfund." The check shall reference the name of the Settling Party and the site and shall be sent to: EPA, Region V, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673. The Settling Party

shall simultaneously send a copy of its check to Mr. Charles McKinley, Assistant Regional Counsel U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

2. Within ten (10) calendar days after the effective date of this Order, the Respondent shall commence a survey to determine whether all residences and businesses in the vicinity of the facility, as shown on the map attached hereto as Exhibit A, have been connected to a public water supply. This survey shall be completed within forty-five (45) calendar days of the Order's effective date. A report describing the survey's methods and results shall be submitted to the U.S. EPA upon the survey's completion. Failure of the Respondent to properly conduct such a survey shall be deemed to be a violation of a the terms of this Order.

3. Within thirty (30) calendar days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval, a work plan for the removal activities ordered as set forth in Paragraph 5 below. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order. The Work Plan shall be made reviewed and approved by U.S. EPA and may be modified in part or whole by the U.S. EPA. Respondent shall implement the Work Plan as modified and approved by U.S. EPA.

4. The Work Plan shall contain a site safety and health plan, a sampling and analysis plan, a quality assurance plan,

and a schedule of the work to be performed. The site safety and health plan shall be prepared in accordance with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 1910. The Work Plan and other submitted documents shall demonstrate that the Respondent can properly conduct the actions required by this Order.

5. Respondent shall retain a contractor qualified to undertake and complete the requirements of this Order, and shall notify U.S. EPA of the name of such contractor within 20 days of the effective date of this Order. U.S. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent. In the event U.S. EPA disapproves of a selected contractor, Respondent shall retain a different contractor to perform the work, and such selection shall be made in ten (10) calendar business days following U.S. EPA's disapproval.

6. Within thirty (30) calendar days after U.S. EPA approval of the Work Plan, Respondent shall implement the Work Plan as approved or modified by U.S. EPA. Failure of the Respondent to properly implement all aspects of the Work Plan shall be deemed to be a violation of the terms of this Order. The following Phase I tasks shall be performed by Respondent at the Facility:

- a. Respondent shall prepare and submit to U.S. EPA a Work Plan which shall identify tasks to be undertaken by Respondent to identify the contaminated soils, if any, at the Facility. The Work Plan shall include a sampling plan to define the extent of any soil contamination from trichloroethylene and any other volatile organic compound disposed of at the facility.
- b. The work plan shall also identify tasks for a limited hydrogeological study to determine the extent of groundwater contamination, if any, at the Facility by trichloroethylene disposal and/ disposal of any other volatile organic compound. The hydrogeological study shall include construction and sampling of groundwater monitoring wells, an appropriate number of which shall be placed on-site at the Facility. The purpose of the hydrogeological study is to determine if contaminants are present in ground-water at the Facility, the extent of their migration whether any such contamination has moved off-site from the Facility, and if so, in what directions.
- c. After approval of the work plan and sampling plan, Respondent shall implement the Work Plan and the sampling plan. Such implementation shall begin within twenty (20) business days after the Phase I Work Plan is approved.
- d. Upon completion of the Phase I Work Plan activities, Respondent shall prepare a Phase I Final Report which summarizes its findings and identifies and evaluates feasible alternative remedial actions for the contaminated soil and groundwater and for prevention of further contaminated groundwater migration. Said report shall be submitted no later than thirty (30) days after completion of the activities required by the Phase I Work Plan.

7. After review of the Phase I Final Report, U.S. EPA shall select methods by which the contaminated groundwater and soil shall be remedied and a method for controlling the migration

of any contaminated groundwater. Within thirty (30) calendar days of selection of such methods, Respondent shall submit a Phase II Work Plan for the implementation of these methodologies.

8. Within thirty (30) calendar days after U.S. EPA approval of the Work Plan, Respondent shall implement the Phase II Work Plan as approved or modified by U.S. EPA. Failure of the Respondent to properly implement all aspects of the Work Plan shall be deemed to be a violation of the terms of this Order.

9. On or before the effective date of this Order, U.S. EPA shall designate an On-Scene Coordinator ("OSC") and Respondent shall designate a Project Coordinator. The OSC and Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Respondent and the U.S. EPA and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the OSC and Project Coordinator. During implementation of the Phase I Work Plan, the OSC and Project Coordinator shall, whenever possible, operate by consensus, and shall attempt in good faith to resolve disputes informally through discussion of the issues.

10. The U.S. EPA and the Respondent shall each have the right to change unilaterally their respective OSC and Project Coordinator. Such a change shall be accomplished by notifying

the other party in writing at least five (5) business days prior to the change.

11. The U.S. EPA OSC shall have the authority vested by the National Contingency Plan, 40 CFR Part 300, as amended, including the authority to halt, conduct or direct any work required by the U.S. EPA when conditions at the Site may present an imminent and substantial endangerment to the public health or welfare or the environment. Provided Respondent is in compliance with the terms of this Order, in the event that the U.S. EPA OSC halts work pursuant to this paragraph such that Respondent's performance under this Order is materially affected, the U.S. EPA may grant the Respondent an extension of the schedule of work established pursuant to this Order for such period as may be necessitated by the delay resulting from the work stoppage.

12. All materials removed from the Facility during the course of Respondent's investigation shall be disposed of or treated at facilities in a manner approved by the OSC and, in addition, in compliance with the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 6901, et seq., and all other applicable federal, state and local requirements, as well as U.S. EPA's then applicable off-site policy.

13. Respondent shall provide access to the Facility to U.S. EPA employees, contractors, agents, and consultants at reasonable times, and shall permit such persons to be present and move freely in the area in order to conduct inspections, including

taking photographs and videotapes of the Facility, to do cleanup/stabilization work, to take samples to monitor the work under this Order, and to conduct other activities which the U.S. EPA determines to be necessary.

14. Respondent shall submit a report summarizing the actions taken to comply with paragraph 5 under this Order. The report shall contain, at a minimum, identification of the Facility, a chronology and description of the investigations performed, identification of problems encountered and how the problems were resolved, a listing of quantities and types of any materials removed, their ultimate destination, and a presentation of the analytical results of all sampling and analysis performed. The report shall be submitted within twenty (20) business days of completion of the work required by the Phase I Work Plan.

15. Nothing contained herein shall be construed to prevent U.S. EPA from seeking further legal relief and payment of additional money damages to enforce the terms of this Order, or prevent U.S. EPA from commencing equitable or other actions as authorized by CERCLA or any other statute or from seeking further relief consistent with this Order pursuant to CERCLA, 42 USC Section 9601, et seq., or any other applicable law.

16. This Order shall be effective upon execution by all parties, and notice by U.S. EPA to Respondent of its execution.

17. Any notice, document, information, report, plan, approval, disapproval or other correspondence required to be submitted from one party to another under the Order shall be deemed submitted either when hand delivered or as of the date of receipt by certified mail, return receipt requested. If the last day of any period defined in this Order falls on a Saturday, Sunday or federal holiday, the period shall be automatically extended to include the next non-holiday weekday. Such written materials shall be sent to the following addresses:

For the U.S. EPA:

On-Scene Coordinator
U.S. EPA, Region V

Kenneth Theisen
Remedial Project Manager
U.S. EPA, Region V
(5HS-11)
230 S. Dearborn Street
Chicago, Illinois 60604

For Respondent:

Mark A. Fury, Esquire
Selmer Company
100 East 42nd Street
New York, NY 10017

18. The United States Government, its agencies, departments, agents, and employees, by this agreement, do not assume any liability arising from, or on account of, acts or omissions of the Respondent, its officers, employees, receivers, trustees, agents, or assign, in carrying out the activities pursuant to this Order. Respondent, by this agreement, does not assume any liability arising from the acts or omissions of U.S. EPA or its agencies, departments, agents, contractors and employees during the course of any activities conducted pursuant to this Order.

Nothing in this Order shall be construed to limit or in any way impair the ability of the U.S. EPA to secure satisfaction of the work to be undertaken pursuant to this Order in the event that Respondent fails to perform the work in accordance with this Order or approved work plans. U.S. EPA reserves the right to perform the activities required hereunder in the event that Respondent fails to comply with the terms of this Order. Upon exercising such right, U.S. EPA will have the right to undertake any of the actions hereunder and to seek payment of money damages or equitable restitution from Respondent thereafter for such costs.

Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the parties may have against any person, firm, partnership or corporation not a party to this Order for any liability such person or entity may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, or disposal of any hazardous substance, hazardous wastes, contaminants, or pollutants at, to, or from the Facility or elsewhere. The parties to this Order expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Order, and as to each other for matters not covered to release.

Nothing herein shall be construed to release Respondent from any liability for failure of Respondent to perform the work required hereunder in accordance with this Order and/or approved work plans. The parties further expressly recognize that this Order and the successful completion of the work required hereunder do not represent satisfaction, waiver, release, or covenant not to sue, of any claim of the United States against Respondent relating to the Facility, including claims to require Respondent to undertake further response actions and claims to seek reimbursement of response costs pursuant to Section 107 of CERCLA except as expressly provided herein.

Nothing herein is intended to be a release or settlement of any other claim for personal injury or property damage by an person whether or not a party to this Order.

22. The United States and Respondent shall be responsible for ensuring that their respective agents, contractors, consultants and any other person acting on their behalf comply with the terms of this Order.

23. Respondent shall cause all work to be performed within the time limits set forth herein and in approved work plans, unless performance is delayed by events which constitute a force majeure. For purposes of this Order, a "force majeure" is an event entirely beyond the control of Respondent which delays or

prevents the performance of any obligation required by this Order. Increases in costs shall not be considered circumstances beyond the control of Respondent. Respondent shall notify the U.S. EPA in writing no later than five (5) business days after any event which Respondent contends is a force majeure. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measure taken and to be taken by Respondent to minimize the delay, and the timetable by which these measures will be implemented. The Respondent shall have the burden of demonstrating that the event is a force majeure. If the delay is or was attributable to a force majeure, the time period for performance under this Order may be extended for the time period attributable to the event constituting the force majeure.

24. The parties shall use their best efforts to, in good faith, resolve all disputes or differences of opinion informally. If, however, disputes arise concerning this Consent Order which the parties are unable to resolve informally, the Respondent shall present a written notice of such dispute to U.S. EPA, which shall set forth specific points in dispute, the position of the Respondent, the technical facts relating to the dispute, and any actions which the Respondent considers necessary.

Within twenty (20) calendar days of receipt of such a written notice, U.S. EPA shall provide a written response to

the Respondent setting forth its position and the basis of U.S. EPA's position.

Within ten (10) business days of receipt of the written response from U.S. EPA, the Parties shall attempt to negotiate, in good faith, a resolution of their differences.

Following expiration of said time periods for negotiating resolution of the dispute, U.S. EPA shall resolve the dispute. If U.S. EPA concurs with the position of the Respondent, the Respondent shall be so notified in writing and the Consent Order shall be modified to include any necessary extensions of time or variances of work. If U.S. EPA does not concur with the position of the Respondent, U.S. EPA shall resolve the dispute based upon and consistent with the terms of this Consent Order and shall provide written notification of such resolution to the Respondent.

The pendency of dispute resolution shall not affect the time period for completion of work and/or obligations to be performed under this Consent Order, except upon mutual agreement of the U.S. EPA and Respondent, any time period may be extended not to exceed the actual time taken to resolve the dispute. Elements of work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the Work Plan.

Upon resolution of any dispute, whether informally or by using the procedures in this Section, any additions, or modifications required as a result of such dispute resolution shall immediately be incorporated, if necessary, into this Consent Order. The Respondent shall proceed with all remaining work according to the modified Consent Order.

25. Subject to the provisions of this Consent Order, for each day the Respondent fails to submit reports or to perform or complete implementation of removal actions required under this Consent Order, in accordance with the schedule contained in the Work Plan, it shall pay stipulated penalties, as follows:

- a. For failure to complete work prescribed in this Consent Order and the U.S. EPA approved Work Plan: One Thousand Five Hundred Dollars (\$1,500) per day for one (1) to seven (7) business days of delays, and Three Thousand Dollars (\$3,000) per day for each delay, or part thereof, thereafter;
- b. For failure to submit any preliminary or final reports, at the time required pursuant to this Consent Order: One Thousand Dollars (\$1,000) per day for the first one (1) to seven (7) business days of delay and two thousand Dollars (\$2,000) per day for each day of delay, or part thereafter, thereafter;

All penalties which accrue pursuant to the requirements of this Section of the Consent Order shall be paid by certified

or cashier check to the Treasurer of the United States of America and shall be remitted to:

EPA - Region 5
Attn: Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

26. The agreement of Respondent to the terms of this Order shall not be considered an admission of liability for any purpose. Respondent does not admit to any of U.S. EPA's findings or determination in the portions of this Order entitled "Findings" and "Determinations".

27. Nothing in this Order shall preclude Respondent from asserting claims against persons or entities not parties to this Order for indemnification or contribution.

28. Respondent may not be the sole potentially responsible party for conditions at the Facility or in Elkhart County, Indiana, nor do the hazardous substances disposed of by Respondent necessarily represent the total volume of hazardous substances at the Facility.

IT IS SO ORDERED AND AGREED:
United States Environmental
Protection Agency

SELMER COMPANY

By: _____
Basil G. Constantelos
Director
Waste Management Division
Region V

By: _____
Date: _____

Effective Date: _____

TOLLING AGREEMENT

This agreement ("Agreement") is entered into this _____ day of _____, 1989, between the United States Environmental Protection Agency (U.S. EPA) and Selmer Company. Selmer Company has been identified by U.S. EPA as a potentially responsible party in connection with two contaminated groundwater plumes near its business site at 500 S. Industrial Parkway in Elkhart, Indiana. U.S. EPA and Selmer Company in consideration of the mutual covenants set out herein, agree as follows:

1. U.S. EPA contends that it presently has a cause of action against Selmer Company under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, in connection with the incurrence of costs by U.S. EPA to provide safe drinking water to residences in a neighborhood generally bounded by Denver Street and Rice Street, Elkhart, Indiana.

2. U.S. EPA presently intends to file a complaint against Selmer Company on or before March 31, 1989, in the United States District Court.

3. U.S. EPA and Selmer Company are entering into this Agreement in order to allow groundwater flow information and other evidence to be gathered, pursuant to an Administrative Order by Consent, which may assist in a resolution of the claim alleged herein, without costly and protracted litigation.

4. This Agreement does not constitute in any way an admission of fact or liability by Selmer Company.

5. This Agreement does not constitute an admission or acknowledgement on the part of U.S. EPA of any applicable statute of limitations under the above cited statute, or any other applicable statutes or laws.

6. Selmer Company agrees that the time between April 1, 1989, and March 30, 1991, will not be included in computing the time limited by any statute of limitations under the causes of actions set forth in paragraph one hereto, if any statute of limitations is applicable. Nor will it be considered in a defense of laches or similar defenses concerning timeliness of commencing a civil action. Selmer Company shall not assert, plead or raise against U.S. EPA in any fashion, whether by answer, motion or otherwise, any defense or avoidance based on the running of any statute of limitations during the aforementioned period and any statute of limitations shall be tolled during and for this period.

7. U.S. EPA agrees not to institute the presently alleged cause of action set forth in paragraph one against the Selmer Company until the time period provided by the Administrative Order by Consent for gathering the evidence and information referred to in paragraph three has expired. The Administrative Order by Consent referred to herein and this instrument

contain the entire agreement between the parties, and no statements, promises or inducements made by any party or agent of any party that is not contained in them shall be valid or binding; and they may not be enlarged, modified, or altered except in writing signed by the parties.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

SELMER COMPANY

By: _____
Basil G. Constantelos
Director
Waste Management Division
Region V

By: _____

Date: _____

Date: _____